

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

ORIGINAL

DOCKET FILE COPY ORIGINAL

RECEIVED

MAY 21 1997

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

In the Matter of

Application by SBC Communications Inc.  
Southwestern Bell Telephone Company,  
and Southwestern Bell Communications  
Services, Inc. d/b/a Southwestern Bell  
Long Distance for Provision of In-Region  
InterLATA Services in Oklahoma

CC Docket No. 97-121

OPPOSITION OF BROOKS FIBER PROPERTIES, INC.  
TO APPLICATION OF SBC COMMUNICATIONS, INC.

Edward J. Cadieux  
Director, Regulatory Affairs -Central  
Region  
Brooks Properties, Inc.  
425 Woods Mill Road South  
Town and Country, Missouri 63017  
(314) 579-4637

May 1, 1997

No. of Copies rec'd  
List A B C D E

024

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

**In the Matter of**

**Application by SBC Communications Inc.  
Southwestern Bell Telephone Company,  
and Southwestern Bell Communications  
Services, Inc. d/b/a Southwestern Bell  
Long Distance for Provision of In-Region  
InterLATA Services in Oklahoma**

**CC Docket No. 97-121**

**OPPOSITION OF BROOKS FIBER PROPERTIES, INC.  
TO APPLICATION OF SBC COMMUNICATIONS, INC.**

**I. SUMMARY**

In Section 271 of the Telecommunications Act of 1996 ("the Act") Congress established the prerequisite groundrules for Bell Company entry into the interLATA market. Of the individual legislative battles over various sections of the Act, perhaps none was more contentious than how to describe the conditions for Bell Company interLATA entry. As SBC and other Bell Companies frequently note, Congress ultimately rejected language which would have placed specific market share-based thresholds in Section 271. Also rejected, however, was the Bell Company push for a "date certain" entry approach. Instead, Congress chose the language which is now found in Section 271. That language

is noteworthy in a number of respects. First and foremost, the statutory language clearly reflects Congress's intent to require actual, well-established, facilities-based competition and full implementation of access and interconnection by Bell Companies at just, reasonable, non-discriminatory and cost-based rates as its chosen alternative to market share or date certain entry approaches. Additionally, the statute reflects an understanding that the competition engendered by a facilities-based carrier with a substantial network completed and with operations established to both the business and residential segments of the market (and to whom the Bell Company is actually providing compliant access and interconnection) is essential before Bell Company entry into the interLATA market will produce net benefits to the public in both the short-term and the long-run. As explained below, the facts demonstrate that SBC's Oklahoma Application under Section 271 is woefully premature in many critical respects, as measured by the statutory standard.

Brooks Fiber Properties, Inc. ("Brooks")<sup>1</sup> is a fast-growing, nationwide facility-based competitive local exchange carrier with networks operational or under construction in approximately forty cities nationwide, including Tulsa and Oklahoma City in the State of Oklahoma. Brooks is the first facility-based competing provider to commence operations in Oklahoma, and is moving rapidly to expand its facilities and to implement interconnection with Southwestern Bell

---

<sup>1</sup> Brooks Fiber Properties, Inc. is the 100% owner Brooks Fiber Communications of Oklahoma, Inc. And Brooks Fiber Communications of Tulsa, Inc.

Telephone Company (SWBT) in a manner that will permit broad-based operations. However, fully implemented access to network elements and interconnection as contemplated in Sections 251, 252, and 271 of the Act is, as of this date, far from a reality in Oklahoma.

SBC's Application contains such fundamental mischaracterizations of fact and tenuous constructions of relevant statutory provisions that one can only conclude that its timing was predetermined by SBC to occur as soon as possible after the first competing carrier began to transmit its first local exchange minutes of use to SBC's network in Oklahoma. This approach is completely at odds with the rigorous facility-based carrier and competitive checklist requirements of Section 271 (c) of the Act. Approval of such an extremely premature Bell Company Application would not only result in a severe setback for local exchange and interexchange competition in Oklahoma, but would set a disastrous precedent, encouraging additional premature Section 271 Applications by SBC and other Bell Companies in other states. Consistent with the facts and arguments presented herein, the Commission should reject the Application as wholly inadequate and premature.

**II. SWBT DOES NOT SATISFY SECTION  
271(c) OF THE ACT BY VIRTUE OF ITS  
INTERCONNECTION AGREEMENTS WITH BROOKS**

SBC asserts that it has satisfied the requirements of Section 271(c)(1)(A) by virtue of its interconnection agreement with Brooks in Oklahoma. (See, SBC

Application at 8-12) That assertion is based on several fundamental errors in construing the provisions of "Track A" to the relevant facts.

**A. Brooks Is Not Currently A Qualifying Carrier Under Section 271(c)(1)(a) Because It Is Not Currently Providing Telephone Exchange Service To Residential Customers In Oklahoma.**

In its zeal to manufacture a case for immediate entry into the interLATA market in Oklahoma, SBC contends that Brooks is furnishing local exchange service to both residential and business customers and that it does so exclusively over its own network. (SBC Application at 9-10).

These assertions are patently erroneous. The actual facts with respect to residential service are these<sup>2</sup>: Brooks has test circuits activated to the residences of four of its Oklahoma employees. These test circuits all are provisioned through resale of SWBT's local exchange service – i.e., no Brooks facilities of any kind are involved. The sole purpose of activating these test circuits is to allow Brooks to gain some limited "hands-on" experience with SWBT's resale systems (e.g., billing, directory assistance) and coordination of those systems with Brooks' retail systems, and to troubleshoot any problems.<sup>3</sup> The number of these residential test

---

<sup>2</sup> Brooks has previously described the errors in SBC's factual assertions regarding this subject in Brooks Comments in Support of Motion to Dismiss and Request for Sanctions By the Association for Local Telecommunications Service, filed April 28, 1997 in this Docket.

<sup>3</sup> The Brooks employees involved in the test of these circuits are not being billed by Brooks for the "service".

circuits has not expanded since the initial activation of the four circuits in January, 1997. The only activity which Brooks has engaged in to this point in Oklahoma which is in any way related to the residential market is this test. Brooks has not commenced a general offering of local exchange service in Oklahoma to residential customers, and has no immediate plans to do so.<sup>4</sup>

In order to meet the Track A requirements, SBC must be:

" . . .providing access and interconnection to its network facilities for the network facilities of one or more unaffiliated competing providers of telephone exchange service...to residential and business subscribers...[S]uch telephone exchange service may be offered by such competing providers either exclusively over their own telephone exchange service facilities or predominantly over their own telephone exchange service facilities in combination with the resale of the telecommunications services of another carrier."

Thus, the first question presented is whether the activation of these four test circuits to the homes of four Brooks employees in Oklahoma constitutes the provision of service to residential subscribers by Brooks for purposes of this

---

<sup>4</sup> The fact that Brooks has not commenced a general offering of local exchange service to residential subscribers in Oklahoma has been known by SBC since early March, 1997, when Brooks responded to specific inquiries regarding the status of its Oklahoma operations. (See, Attachment A to the ALTS Motion to Dismiss and Request for Sanctions.) This fact was confirmed again by Brooks on March 25, 1997 in its comments before the Oklahoma Corporation Commission in the state investigation concerning this Application (Comments of Brooks Fiber Communications of Tulsa, Inc., and Brooks Fiber Communications of Oklahoma, Inc. in Oklahoma Corporation Commission Cause No. PUD 970000064 at 2), and again on April 15, 1997 upon cross-examination of Brooks' witness at the evidentiary hearing in that same state docket.

critical section of the Act. The answer is clearly "no". These circuits involve an extremely limited effort at "debugging" systems – they do not constitute commercial operation of residential service in any recognized business use of that term. Can SBC truly suggest that these circuits to four Brooks employees constitutes evidence and confirmation of competition in the residential services market in Oklahoma? The relevant legislative history demonstrates the absurdity of such an assertion. For example, the House Committee Report confirms that the, "... 'openness and accessibility ' requirements are truly validated only when an entity offers a competitive local service in reliance on those requirements." H.R. Rep. No. 104-204 at 76-77 (emphasis supplied). The statutory language evidences an understanding that meaningful commercial operations is one of several essential conditions for Track A entry, in order to protect against Bell Company exertion of market power at a time when it could do the most damage to emerging local exchange competition. To suggest that the activation of four residential test circuits to a competing carrier's employees constitutes the type of established residential service necessary to satisfy Track A makes a mockery of the Act and its historic pro-competitive purposes.

**B. Brooks Is Not Providing Residential Telephone Local Exchange Service Either Exclusively or Predominantly Over Its Own Facilities.**

The extent of Brooks' current activity in any way related to residential service in Oklahoma is the four above-described test circuits. Each of these circuits is provisioned through resale of SWBT local exchange service – i.e., dial-

tone is provided by SWBT. Even if one assumes that these test circuits constitute the provision of service to residential subscribers for purposes of Track A, the fact is that all of these circuits are being provisioned through resold SWBT local exchange service and that no Brooks facilities of any kind are involved.<sup>5</sup>

Thus, there is absolutely no basis for any contention that Brooks is providing service to residential subscribers in Oklahoma either exclusively or predominantly over its own facilities. Track A requires such a demonstration. Section 271 (c) (1) (A) must be interpreted as applying the "exclusively or predominantly" facilities test independently to both business and residential local exchange service. This construction is most consistent with the Congressional recognition that broadly offered facilities-based competition is essential before allowing Bell Company entry.

Brooks does not intend to make a general offering of local exchange service to residential customers in Oklahoma through resale of SWBT's local exchange service. Where Brooks provides residential local exchange service (e.g., in Grand Rapids, Michigan), it does so through incumbent LEC unbundled loop facilities in combination with Brooks's facilities. However, Brook's ability to offer residential local exchange service through use of unbundled loops in

---

<sup>5</sup> The fact that the test circuits utilize resold SWBT local exchange service was related by Brooks to SBC in Brooks March 4 letter, and again in Brooks March 25 comments and testimony upon cross-examination in the Oklahoma state investigation.

Oklahoma (or any other state) is directly dependent on the actual availability of such facilities from the incumbent LEC. At this time, SWBT's unbundled loop facilities are not actually available to Brooks in Oklahoma. Given its fiber optic ring network and specific network plans in Oklahoma, Brooks must obtain completion of its collocations in various SWBT Tulsa and Oklahoma City central offices in order to connect its network to SWBT's unbundled loop facilities.<sup>6</sup> None of the necessary collocations is operational at this time. Completion of these collocations is primarily in the hands of SWBT.<sup>7</sup>

It is important for the Commission to understand that Brooks intends to operate as a facilities-based (rather than resale) carrier in Oklahoma and is moving forward as rapidly as possible to fully implement interconnection with SWBT. At this point, however, interconnection has only been implemented to a limited extent – i.e., connection between the Brooks host switch and SWBT's local

---

<sup>6</sup> In two SWBT Oklahoma City central offices, Brooks is pursuing a new contractual form of virtual collocation as an alternative to physical collocation, since Brooks has been informed that space for physical collocations is not available. Brooks also has two pre-existing virtual collocations at SWBT Oklahoma central offices under SWBT's interstate expanded interconnection virtual collocation tariff. However, use of unbundled loops through those virtual collocations is not technically or economically feasible.

<sup>7</sup> Once these collocations are completed, additional time will be required for equipment testing and testing of SWBT unbundled network element Operational Support Systems and their interaction with Brooks systems before Brooks will be in a position to commence a commercial offering of unbundled loop-based service to Oklahoma customers.

tandems, but not at collocations which are required for unbundled loop-based service -- and the timing of full implementation is largely in hands of SWBT. It is truly ironic that SBC would base a Section 271 Application on these facts. As a practical matter, Brooks does not currently have available to it the facilities (collocations) necessary to utilize the unbundled loops which would be required to provide facilities-based residential service.<sup>8</sup>

Moreover, SWBT does not currently offer unbundled loops at rates which would permit the offering of facilities-based residential service in Oklahoma on an economically viable basis. The price for unbundled loops contained in the Brooks-SWBT Oklahoma interconnection agreement is \$17.63.<sup>9</sup> When combined with a \$1.50 cross-connect charge, the effective per loop charge to Brooks is more than \$19. At the same time, SWBT's retail residential local exchange rate in the Oklahoma City and Tulsa metro areas is approximately \$13. Thus, even once

---

<sup>8</sup> SBC correctly notes that Brooks has received authority from the Oklahoma Corporation Commission to provide all types of intrastate switched services, including local exchange "dial-tone" service, and that Brooks has General Exchange/Local Exchange tariffs which have been approved by the Oklahoma Commission. (SBC brief at 9-10) The grant of authority and approval of tariffs does not, of course, equate to the actual provision of service, particularly in the circumstances of a new entrant deploying facilities to compete with an entrenched monopoly carrier. Brooks Oklahoma tariffs provide that its provision of service is subject to the availability on a continuing basis of all necessary facilities.

<sup>9</sup> To Brooks knowledge, no other carrier has a lower unbundled loop rate from SWBT in Oklahoma. Thus, there is no lower rate for Brooks to opt-into at the present time.

unbundled loops become available, SWBT has priced loops at a level which would make meaningful unbundled loop-based residential local exchange service economically unsustainable for a new entrant.

From the perspective of SBC's in-region interLATA aspirations, Brooks' status as the first facilities-based entrant in Oklahoma has presented a dilemma. Brooks' primary mode of operations will be through unbundled loops, and reasonable pricing of those facilities is a necessary condition for the offering of broadly available services, including residential service, by an unbundled loop-dependent carrier.<sup>10</sup> On the other hand, SBC has an obvious incentive to keep unbundled loop rates high in order to maximize short-run revenues and limit competitive inroads. With the filing of the instant Application SBC's strategy is clear – maintain high unbundled loop rates to maximize revenues and impede the development of facilities-based competition, while concocting “novel” statutory interpretations and ignoring the facts to effect an end-run around the requirements of Track A. The Commission should reject SBC's effort to have it both ways.

**C. Brooks Is Not Providing Service To Business Customers Either Exclusively or Predominantly Over Its Own Facilities.**

In addition to its assertions regarding residential service, SBC asserts that

---

<sup>10</sup> Both the availability and pricing of unbundled loops may be less critical to other types of competitive carriers, such as CATV firms. Other unbundled network elements – e.g., unbundled switching – may be more important to other carriers than to Brooks, which is deploying its own switching facilities.

Brooks provides service to business customers exclusively over its own facilities. (SBC Application at 11.) Again, however, the assertion flies in the face of the facts and fundamentally disregards the Section 271(c)(1)(A) requirements. As noted in Brooks' Initial Comments in the Oklahoma state investigation and, indeed, as reflected in SBC's Application, in its current initial stage of operations Brooks is serving a relatively small number of business customers through a mix of on-net origination (i.e., directly connected to Brooks' fiber optic transmission facilities) and "Type 2" origination (i.e., provisioned with SWBT dedicated T-1 from the end-user's premises, through the SWBT serving wire center and all the way to a termination point at Brooks' switch).<sup>11</sup>

There are several key points to consider in evaluating SBC's claim. First, as discussed above, because of its fiber ring network configuration Brooks will rely heavily on SWBT unbundled loops as a method for extending origination to a significant portion of the customer base in its Oklahoma markets. As also discussed above, SWBT's unbundled loops are not currently available for use by Brooks due to the current lack of completion of necessary collocation facilities. Thus, a "snapshot" of Brooks' Oklahoma operations at the present time provides a

---

<sup>11</sup> In its March 25 comments in the Oklahoma state investigation Brooks disclosed that it was, at that point, serving 8 business customers through on-net origination and 11 business customers through Type 2 origination. One additional business customer was being served through resold SWBT ISDN service. While Brooks is adding business customers on a continuous basis, the total number of business customers in Oklahoma has not changed dramatically since Brooks' filing of the March 25 comments,

very skewed and unrepresentative view of its pattern of originating traffic. Given the very early stage of its operations and the delays incurred in the completion of Oklahoma collocations, completely missing from the picture is any use of what Brooks expects to be its primary mode of traffic origination – unbundled loops. The unrepresentative nature of Brooks' current traffic origination methods in Oklahoma is, in and of itself, reason to conclude that any Track A filing is extremely premature at this stage.

When Brooks reaches a point where it is utilizing a meaningful number of SWBT unbundled loops in Oklahoma, an additional critical question will be presented – whether a carrier operating primarily through unbundled loop originations can be considered to be providing service exclusively or predominantly through its own facilities, as is required for satisfaction of the Track A standard. Brooks submits that the answer to that question is “no”. The reasons for this conclusion relate to the critical nature of these facilities to a carrier like Brooks, and because of the Bell Company's complete control over the facilities even when they are provisioned for use by a competing carrier. First, a fiber optic ring carrier like Brooks simply cannot reach the vast majority of customers in a market without substantial use of the serving Bell Company's unbundled loops. Thus, potential problems which Brooks may encounter in obtaining efficient and timely processes for ordering, provisioning, maintenance and other operational support system functions for unbundled loops from SWBT would have a significant detrimental effect on Brooks' ability to compete.

Second, to the extent SBC or others may suggest that use of unbundled loops constitutes a competing carrier's use of its "own" facilities for purposes of Section 271(c)(1)(A), that suggestion is, frankly, ridiculous. The obvious issue is one of control – while the competing carrier obtains the right to use the unbundled loop when "purchased", the Bell Company retains control of the facility for all relevant purposes, and the competing carrier remains dependent on the Bell Company to receive fair, equal and non-discriminatory treatment in the provision of the unbundled loop relative to the Bell Company's own retail use of similar facilities.<sup>12</sup>

Even if, notwithstanding these arguments, the current "snapshot" of Brooks' Oklahoma operations is relied upon for purposes of a Track A analysis, SBC's Application fails on the facts. As discussed above, Brooks is currently utilizing a combination of on-net and Type 2 origination for business customers in Oklahoma. As also noted, Type 2 service involves use of SWBT dedicated T-1 facilities from the end-user's premises, through the SWBT serving wire center, and continuing through to a point of termination at the Brooks' host switch. SBC contends that this Type 2 configuration qualifies as "predominantly" Brooks

---

<sup>12</sup> The related and more substantial issue which will be presented is whether a competing carrier relying primarily on unbundled loops from the Bell Company is providing service "predominantly" over its own facilities. Brooks submits that this question will be one which is peculiarly dependent on the specific facts presented, but is not yet ripe for decision with respect to Brooks' Oklahoma operations since SWBT's unbundled loops are not yet available to it.

facilities, apparently on the grounds that it does not involve SWBT switching or trunking facilities. (SBC brief at 11) This is nonsense. In the Type 2 configuration, the SWBT T-1 facilities are generally analogous to loop and transport facilities.<sup>13</sup> These are two critical traffic originating functions, and SWBT retains complete functional control over the facility in the Type 2 configuration. Brooks merely has the right to use the facility, while SWBT retains complete functional control thereof. This is not the sort of “facilities independence” for a competing provider that is implicit in the Track A standard.

The facts upon which SBC relies – Brooks’ comments in the Oklahoma state investigation – were that Brooks was serving 8 customers through on-net origination and 11 customers through Type 2 origination. Thus, even if the “snapshot” approach is used, the facts fail to support SBC’s contention. Under no reasonable construction of the Act can one conclude that Brooks is providing service to business customers in Oklahoma “exclusively” or “predominantly” over Brooks’ own facilities.

---

<sup>13</sup> The Type 2 configuration is a stop-gap measure in the absence of unbundled loop availability. Type 2 is inferior to unbundled loops as a traffic origination method for several reasons. Type 2 origination requires deployment of additional equipment with associated additional costs, and is economically feasible only for customers exceeding a threshold minimum number of lines. Also, marketing of Type 2 service is more difficult due the fact that all of a customer’s lines are carried over a single facility.

**D. SBC is not Providing Access and Interconnection Through its Interconnection Agreement with Brooks in a Manner that is in Full Compliance with the "Competitive Checklist".**

Reading the several provisions of Section 271 in concert, it is evident that Congress established three separate conditions, each of which must be met in order for Track A entry to be satisfied. First, there must be a qualifying carrier under Section 271(c)(1)(a). As discussed above, the competing provider must be providing service to both business and residential subscribers and to be doing so either exclusively or predominantly over its own facilities. Second, the Bell Company must actually be providing access and interconnection pursuant to an agreement with such a qualifying carrier. And, third, it must be demonstrated that such access and interconnection are being provided in a manner that is fully compliant with the "competitive checklist", including at rates, terms and conditions which in all respects are just, reasonable, non-discriminatory and cost-based. As discussed above, Brooks is not currently a qualifying carrier for purposes of an SBC Oklahoma Track A filing, and to the extent the SBC Application relies on Brooks that reliance is misplaced and the Application is fatally flawed. The Commission need go no further to conclude that the Application should be rejected. If more is deemed necessary or appropriate by the Commission, however, the SBC Application is also deficient in crucial respects regarding the second and third requirements for Track A entry.

Section 271 requires actual, in-fact, operational implementation of access and interconnection. The fact that access and interconnection are contained

within the terms and conditions of one or more interconnection agreements between the Bell Company and a competing provider is not sufficient. The precise language of the statute demonstrates this intent -- under Section 271(c)(2)(A) a Track A filing requires a demonstration that the Bell Company is providing access and interconnection pursuant to one or more agreements. The use of the active form of this phrase connotes an intent that actual implementation is the test. See also, Section 271 (d) (3) (A) (i), which requires that access and interconnection consistent with the competitive checklist be “fully implemented” before the Commission can approve a Section 271 Application. The mere “offering” of such access and interconnection – i.e., inclusion of the necessary features and functions within an approved interconnection agreement -- is not sufficient for satisfying the Track A requirements. This conclusion is substantiated by the legislative history, in which Congress recognized that a competitive carrier must be “operational” to satisfy Track A (H.R. Rep. No. 458 at 148), and that the access and interconnection requirements “...are truly validated only when an entity offers a competitive local service in reliance on those requirements.” H.R. Rep. No. 104-204 at 76-77 (emphasis supplied).<sup>14</sup>

---

<sup>14</sup> The active, in-fact implementation character of the access and interconnection requirement is further confirmed by comparison with the relevant Track B language. In Section 271 (c) (1) (B), Congress employs the term “offers” (“A Bell operating company meets the requirements of this subparagraph if...the company makes its application under subsection (d) (1), and a statement of the terms and conditions that the company generally offers to provide such access and interconnection...” Thus, if a Bell Company experienced a failure to request access the Act contemplates that mere offering of access and interconnection is sufficient, since actual, in-fact implementation would be precluded due to the

Actual, in-fact, full implementation of the Brooks-SWBT Oklahoma interconnection agreement is not a reality at this point. The initial physical interconnection of the two companies' networks has occurred but, as detailed below, critical aspects of full implementation remain unfulfilled.

### **1. Collocation/Interconnection**

As explained above, collocation is an essential element of Brooks market entry in Oklahoma. Deployment of collocations in SWBT's principal central offices in Oklahoma City and Tulsa will permit Brooks to extend the reach of its network for traffic origination purposes well beyond the limited portion of the customer base which is located in immediate proximity of its fiber optic transmission facilities, and to smaller business and (potentially) residential customers for whom direct connection to the Brooks network is not economically feasible. Brooks currently has 13 collocations in process with SWBT in Oklahoma.<sup>15</sup>

Brooks has worked diligently to gain completion of these collocation

---

absence of an interconnection request. In contrast, however, where a Track B deactivating interconnection request has been submitted and pursued, the Act requires actual provision and full implementation of the competitive checklist.

<sup>15</sup> Brooks has two expanded interconnection virtual collocations operational in Oklahoma, one in Tulsa and one in Oklahoma City. These virtual collocations are pursuant to SWBT's interstate tariff and are not useable for unbundled loop originating service. These virtual collocations are being utilized for the interconnection points between the Brooks networks and SWBT's local tandems.

facilities at the earliest possible date. Despite these efforts, none of the collocations has been completed at this time. Brooks has found the processing time for these collocations to be excessive. For several of the Oklahoma central offices, Brooks initiated the collocation application process as much as ten months ago.<sup>16</sup> In part, these delays have resulted from SWBT collocation processing procedures which Brooks has found to be overly bureaucratic, confusing and inflexible, and in part to extended SWBT construction schedules<sup>17</sup> factors that are wholly within the control of SWBT.

Brooks has a strong financial incentive to achieve completion of each of its SWBT collocations at the earliest possible date. Brooks has already invested millions of dollars in Oklahoma in a front-end loaded, highly capital intensive network, including the purchasing of sophisticated switching and transmission equipment to be deployed in these collocation spaces. On the other hand, SWBT has a financial disincentive for rapid completion of the collocations, since the sooner they are completed, the sooner Brooks will have the opportunity to

---

<sup>16</sup> In a number of cases, SWBT has failed to provide price quotes within its own 35-day time commitment and construction lead times of approximately five months have been typical.

<sup>17</sup> SWBT has suggested that the delays are due to Brooks-initiated changes in technical specifications for many of the collocations. In fact, a number of those changes occurred after initial confusion regarding SWBT's collocation forms and assumptions was clarified, or in response to price quotes which made initial plans for a particular central office no longer feasible, or in reaction to information from SWBT that insufficient space was available in a particular central office for physical collocation.

compete through use its primary origination method – unbundled loops. Whether or not the collocation delays Brooks has incurred have resulted from calculated intent is, however, not really the issue for purposes of SBC’s Application. What is important is that Brooks, despite its best efforts, and SWBT are not at a point where Brooks' primary method of interconnection has not been completed. This merely confirms the premature nature of SBC’s Application and the fact that SBC cannot be found to be “providing” interconnection to Brooks, and SBC cannot be found to have “fully implemented” the interconnection element of the competitive checklist.

## **2. Unbundled Loops**

Section 271(c)(2)(A) requires a showing that the Bell Company is providing “access and interconnection” in a manner that meets the competitive checklist. Included within the “access” portion of this requirement is “[n]ondiscriminatory access to network elements in accordance with the requirements of sections 251(c)(3) and 252(d)(1)”<sup>18</sup> Together, these latter referenced provisions require that the Bell Company provide nondiscriminatory access to network elements on an unbundled basis at any technically feasible point at rates which are just, reasonable, nondiscriminatory and based on cost.<sup>19</sup> As

---

<sup>18</sup> Section 271 (c) (2) (B) (ii).

<sup>19</sup> See, section 4, infra, for a discussion of cost/pricing considerations.

previously discussed herein, SBC is not currently providing Brooks unbundled loops due to the fact that Brooks' collocations – which will establish the interconnection points at which unbundled loops will be connected to Brooks facilities – have not been completed. Thus, while unbundled loops are “offered” to Brooks, in the sense of being included in an approved interconnection agreement, they are not actually being provided to Brooks at this time. Therefore, the Brooks-SWBT interconnection agreement cannot be said to be “fully implemented” with respect to this critical item, and SBC’s Application fails on this point.

### **3. Interim Number Portability**

Number portability (including interim number portability) is another key element of the competitive checklist. Pursuant to Section 271(c)(2)(B)(xi), compliance with the competitive checklist requires that the Bell Company provide interim number portability “...through remote call forwarding, direct inward dialing trunks, or other comparable arrangements, with as little impairment of functioning, quality, reliability, and convenience as possible.”<sup>20</sup> Additionally, the substantive provisions of Sections 251 (c) (3) and 252 (d) (1) – access that is just, reasonable, nondiscriminatory and cost-based – are applicable.

As described in its comments in the Oklahoma state investigation, Brooks

---

<sup>20</sup> Once permanent number portability regulations become effective, compliance with the Commission’s rules with respect thereto is required.

has experienced some significant early problems with SWBT's implementation of interim number portability (INP). At the time of the April 15 evidentiary hearing in the state investigation, Brooks had activated service to 12 Oklahoma customers utilizing interim number portability, and in all but one instance the implementation failed to go smoothly. Based on Brooks' investigation of the problem through its on-site personnel, and as described in its sworn comments and exhibits in the state investigation, the problems resulted in part from SWBT's failure to coordinate properly its internal tasks of disconnecting the customer's service from its network and SWBT's activation of the remote call forwarding function, and in part from SWBT's failure to adjust actual INP cutovers to reflect schedule changes which had been transmitted by Brooks to SWBT.<sup>21</sup>

Brooks expects that the Commission will be told by SBC that these problems have been fixed, and that SWBT recently successfully implemented INP for a Brooks customer with a significant number of lines. As far as it goes, that assertion is true. What is also true, however, is that Brooks is continuing to experience continuing INP implementation problems. As recently as April 25, SWBT implemented INP for a Brooks customer 3 hours ahead of schedule,

---

<sup>21</sup> In its unsworn comments in the Oklahoma state investigation, SWBT attempted to discount these problems by alleging that they resulted from Brooks misdirecting the service order to the wrong SWBT personnel. That did, in fact, occur with respect to one service order, but it does not explain the recurring problems which Brooks experienced.

resulting in a service outage lasting most of the business afternoon.<sup>22</sup> In another recent situation, Brooks encountered difficulties in getting SWBT LSPSC (which process INP orders) and its ICSC group (which processes access service requests) to coordinate DS-1 and INP activations for seamless implementation of Type 2 service using INP. In another recent case, SWBT implemented INP on the originally schedule cutover date of April 29, even though the cutover date had been changed to May 6.<sup>23</sup>

Each of these INP problems is important for a carrier like Brooks. The last thing a new entrant in this heretofore monopoly market needs is to start its relationship with a new customer with a service outage. These problems not only damage a competing carrier's relationship with the individual customers involved, but they also create the ominous potential for "chilling" the market in a pervasive manner if customers generally begin to associate a change of service provider as entailing a high likelihood of an immediate service outage. Additionally, these occurrences also significantly increase the workload for Brooks in terms of network and customer service activities, diverting limited time and resources from

---

<sup>22</sup> SWBT refused to immediately reactivate the customer's "old" numbers to remedy the outage because SWBT had immediately reused those numbers for one its own Plexar customers.

<sup>23</sup> When Brooks contacted SWBT to report the problem, SWBT confirmed that its records reflected the May 6 date and no explanation was provided as to why INP was implemented on April 29.

the work of operating its network and winning new customers.

Based on its direct experience, Brooks can state that the INP problems it is continuing to encounter with SWBT are not the result of any technological “glitch”, but instead stem from SWBT administrative inefficiencies and errors. Brooks had hoped that these problems would disappear after an initial batch of orders had been processed, but that is not proving to be the case.<sup>24</sup> Until these problems are resolved and SWBT establishes a track record of consistent, timely and high quality implementation of INP, SBC cannot be found to be providing INP “with as little impairment of functioning, quality, reliability, and convenience as possible” or in a “just, reasonable and nondiscriminatory” manner as required for competitive checklist compliance. SBC’s Track A Application fails on this point.

#### **4. Cost-Based Pricing of Interconnection and Network Elements**

As part of the competitive checklist, the Act requires that the Bell Company provide access and interconnection and access to network elements in accordance with the requirements of Sections 251(c)(3) and 252(d)(1). Collectively, the referenced sections impose obligations on incumbent local exchange carriers to provide interconnection and access to network elements at rates and upon terms and conditions that are just, reasonable, non-discriminatory

---

<sup>24</sup> Based on its most recent experiences, Brooks intends to escalate the issue within SWBT to seek a resolution.

and based on cost. SBC has failed to demonstrate that the rates, terms and conditions contained in the Brooks-SWBT interconnection agreement meet this standard.

The Brooks-SWBT interconnection agreement, by its terms, does not constitute proof that the rates contained therein meet the substantive standards of Sections 251(c)(3) and 252(d)(1). The Brooks-SWBT Oklahoma interconnection agreement is a “negotiated” agreement under the Act – i.e., it was agreed to and submitted to the state commission without utilizing the arbitration process set out in Section 252. As such, the agreement need only meet the limited standard of Section 252 (e) (2) (A) – *i.e.*, that the agreement avoids discrimination against a non-party telecommunications carrier and is not inconsistent with the public interest – in order to gain approval under the Act. The agreement itself contains an assertion by SWBT of its belief that the agreement meets all requirements under the Act, but Brooks included its own statement, recognizing only that the agreement meets the limited Section 252(e)(2)(A) standard but otherwise disclaiming any satisfaction of any other requirements of the Act.<sup>25</sup> Beyond the specific terms of the agreement, the context of the Brooks-SWBT interconnection negotiations are instructive with respect to the cost-based pricing requirement of the competitive checklist. In determining whether to enter into a negotiated

---

<sup>25</sup> See, Brooks-SWBT Oklahoma Interconnection Agreement at Section XXIII.